UNIFORM LIMITED PARTNERSHIP ACT (1976)
WITH 1985 AMENDMENTS

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Limited Partnership Act (1976) with 1985 Amendments was as follows:

BROCKENBROUGH LAMB, JR., 1200 Mutual Building, Richmond, VA 23219, Chairman
ROBERT H. CORNELL, 25th Floor, 50 California Street, San Francisco, CA 94111
ROBINSON O. EVERETT, 450 E Street, N.W., Washington, DC 20442
PATRICK C. GUILLOT, Suite 3300, InterFirst Plaza, Dallas, TX 75202
MORRIS W. MACEY, Suite 900, 133 Carnegie Way, N.W., Atlanta, GA 30303
ROGER P. MORGAN, One Financial Plaza, Hartford, CT 06103
MICHAEL P. SULLIVAN, 3400 City Center, Minneapolis, MN 55402
ROBERT M. BERGER, Room 1955, 231 South LaSalle Street, Chicago, IL 60604, Reporter
CARLYLE C. RING, JR., Room 322-D, 5390 Cherokee Avenue, Alexandria, VA 22312, President (Member Ex Officio)
WILLIAM J. PIERCE, University of Michigan, School of Law, Ann Arbor, MI 48109, Executive Director
ROBERT C. ROBINSON, 12 Portland Pier, P.O. Box 568, Portland, ME 04112, Chairman, Division D (Member Ex Officio)

Advisors to Special Committee on Uniform Limited Partnership Act (1976) with 1985 Amendments from the American Bar Association
Section of Corporation, Banking and Business Law

JOEL S. ADELMAN, 2290 First National Building, Detroit, MI 48226
THURSTON R. MOORE, P.O. Box 1535, Richmond, VA 23212
JOHN H. SMALL, 1310 King Street, Wilmington, DE 19899
HOWARD P. WALTHALL, Cumberland Law School, Samford University, 800 Lakeshore Drive, Birmingham, AL 35229

Final, approved copies of this Act and copies of all Uniform and Model Acts and other printed matter issued by the Conference may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611
(312) 321-9710
The Revised Uniform Limited Partnership Act adopted by the National Conference of Commissioners on Uniform State Laws in August, 1976. In 1976, the National Conference of Commissioners on Uniform State Laws adopted the first revision of the Uniform Limited Partnership Act, originally promulgated in 1916. The 1976 Act was intended to modernize the prior uniform law while retaining the special character of limited partnerships as compared with corporations. The draftsman of a limited partnership agreement has a degree of flexibility in defining the relations among the partners that is not available in the corporate form. Moreover, the relationship among partners is consensual, and requires a degree of privity that forces the under some circumstances may require a general partner to seek approval of the other partners (sometimes unanimous approval) under circumstances that corporate management would find unthinkable. The limited partnership was not intended to be an alternative in all cases where the corporate form is undesirable for tax or other reasons, and the new 1976 Act was not intended to make it so. The new 1976 Act clarifies many ambiguities and filled interstices in the prior uniform law by adding more detailed language and mechanics. In addition, it effected some important substantive changes and additions have been made from the prior uniform law.

The Uniform Limited Partnership Act (1976) with the 1985 Amendments (the 1985 Act) follows the 1976 Act very closely in most respects. It makes almost no change in the basic structure of the 1976 Act. It does, however, differ from the 1976 Act in certain significant respects for the purpose of more effectively modernizing, improving, and establishing uniformity in the law of limited partnerships. The 1985 Act accomplishes this, without impairing the basic philosophy or values underlying the 1976 Act, by incorporating into the structure, framework, and text of the 1976 Act the best and most important improvements that have emerged in the limited partnership acts enacted recently by certain states. Most of those improvements were considered by the draftsmen of the 1976 Act but were not included in it because of uncertainties as to the possible consequences of
such inclusion under applicable Federal income tax laws. Those uncertainties have since been resolved satisfactorily, and no impediment to incorporating them in the 1985 Act remains at this time.

Article 1 provides a list of all of the definitions used in the Act, integrates the use of limited partnership names with corporate names and provides for an office and agent for service of process in the state of organization. All of these provisions were new innovations in the 1976 Act and were carried over from the 1976 Act to the 1985 Act. Article 2 collects in one place all provisions dealing with execution and filing of certificates of limited partnership and certificates of amendment and cancellation. When adopted in 1976, Articles 1 and 2 reflect an important change in the prior statutory scheme: recognition that the basic document in any partnership, including a limited partnership, is the partnership agreement. The certificate of limited partnership is not a constitutive document (except in the sense that it is a statutory prerequisite to creation of the limited partnership), and merely reflects the most basic matters as to which government officials, creditors, and others dealing or considering dealing with the partnership should be put on notice. This principle is further implemented by the 1985 Act's elimination of the requirement, carried from the original 1916 Act into the 1976 Act, that the certificate of limited partnership set out the name, address, and capital contribution of each limited partner and certain other details relating to the operation of the partnership and the respective rights of the partners. The former requirement served no significant practical purpose while it imposed on limited partnerships (particularly those having large numbers of partners or doing business in more than one state) inordinate administrative and logistical burdens and expenses connected with filing and amending their certificates of limited partnership. Many of the other changes made by the 1985 Act merely reflect the elimination of that requirement.

Article 3 deals with the single most difficult issue facing lawyers who use the limited partnership form of organization: the powers and potential liabilities of limited partners. Section 303 lists a number of activities in which a limited partner may engage without being held to have so significantly participated in the control of the business that he acquires the liability of a general partner. Moreover, it goes on to confine the liability of a limited partner who merely steps over the line of participation participates in control to situations in which persons who actually know of that participation in control are misled thereby to their detriment into reasonably believing the limited partner to be a general partner. General liability for partnership debts is imposed only on those limited partners who are, in effect, "silent general partners." With that exception, the provisions of
the new Act that impose liability on a limited partner who has somehow permitted third parties to be misled to their detriment as to the limited partner’s true status confine that liability to those who have actually been misled. This "detrimental reliance" test, together with an expansion of the "laundry list" of specific activities in which limited partners may participate without incurring liability, are among the principal innovations in the 1985 Act.

The provisions relating to general partners are collected in Article 4. It differs little from the corresponding article in the 1976 Act, except that some of the 1976 Act's references to the certificate of limited partnership have been changed to refer instead to the partnership agreement. This is in recognition of the principle that the limited partnership agreement, not the certificate of limited partnership, is the primary constitutive, organizational, and governing document of a limited partnership. Article 5, the dealing with finance section, makes some important respects from Article 5 of the 1976 Act, which itself made some important changes from the prior uniform law 1916 Act. The 1976 Act explicitly permitted contributions to the partnership to be made in the form of the contribution of services and promises to contribute cash, property, or services are now explicitly permitted as contributions. And, and provided that those who failed to perform promised services were required, in the absence of an agreement to the contrary, to pay the value of the services as stated in the certificate of limited partnership. These important innovations of the 1976 Act are retained in substance in the 1985 Act. However, the 1985 Act substitutes the partnership agreement and the records of the limited partnership for the certificate of limited partnership as the place such agreements are to be set out and such information is to be kept.

A Article 6 of the 1976 Act, dealing with distributions and with the withdrawal of partners from the partnership, made a number of changes from the prior uniform law are made in Article 6, dealing with distributions from and the withdrawal of partners from the partnership 1916 Act. For example, Section 608 creates a statute of limitations on applicable to the right of a limited partnership to recover all or part of a contribution that has been returned to a limited partner, whether to satisfy creditors or otherwise. The 1985 Act retains these features of the 1976 Act without substantive change.

The In both the 1976 and the 1985 Acts, the assignability of partnership interests is dealt with in considerable detail in Article 7. The and the provisions relating to dissolution appear in Article 8, which, among other things, imposes Article 8 of the 1976 Act established a new standard for seeking judicial dissolution
of a limited partnership, which standard is carried forward into the 1985 Act.

One Article 9 of the 1976 and 1985 Acts deals with one of the thorniest questions for those who operate limited partnerships in more than one state has been, i.e., the status of the partnership in a state other than the state of its organization. Neither existing case law under the 1916 Act nor administrative practice makes it clear which state's law governed the partnership or whether, in that other state, the limited partners continue to possess their limited liability and which law governs the partnership. Article 9 deals of the 1976 Act dealt with this problem by providing for registration of foreign limited partnerships and specifying choice-of-law rules. Article 9 of the 1985 Act retains all of those basic provisions and innovations of the 1976 Act.

Finally, Article 10 of the new 1976 Act authorizes another significant innovation, by authorizing derivative actions to be brought by limited partners. The 1916 Act failed to address this entire concept. Article 10 of the 1985 Act clarifies certain provisions of the 1976 Act but does not make any substantive changes in the corresponding provisions of the 1976 Act.

Finally, Article 11 sets out a number of miscellaneous provisions, not the least of which are those dealing with the application of the new statute to limited partnerships in existence at the time of its enactment. Those provisions in the 1976 Act were expanded upon by the 1985 Act to give greater deference to the possible expectations, some of which may have constitutionally protected status, of partners in such limited partnerships concerning the continuing applicability to their partnerships of the law in effect when they were organized.
ARTICLE 1
GENERAL PROVISIONS

SECTION 101. DEFINITIONS. As used in this [Act], unless the context otherwise requires:

(1) "Certificate of limited partnership" means the certificate referred to in Section 201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 402.

(4) "Foreign limited partnership" means a partnership formed under the laws of any State other than this State and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited
partnership as a limited partner in accordance with the partnership agreement and named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this State and having one or more general partners and one or more limited partners.

(8) "Partner" means a limited or general partner.

(9) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

COMMENT

The definitions in this section clarify a number of uncertainties in the law existing prior to the 1976 Act, and also make certain changes in such prior law. The 1985 Act makes very few additional changes in Section 101.

Contribution: this definition makes it clear that a present contribution of services and a promise to make a future payment of cash, contribution of property or performance of services are permissible forms for a contribution. Accordingly, the present Section 502 of the 1985 Act provides that a limited partner's promise to
make a contribution is enforceable only when set out in a writing signed by the limited partner. (This result is not dissimilar from that under the 1976 Act, which required all promises of future contributions to be described in the certificate of limited partnership, which was to be signed by, among others, the partners making such promises.) The property or services contributed presently or promised to be contributed in the future must be accorded a value in the certificate of limited partnership (Section 201(5)), partnership agreement or the partnership records required to be kept pursuant to Section 105, and, in the case of a promise, that value may determine the liability of a partner who fails to honor his agreement (Section 502). Section 3 of the prior uniform law 1916 Act did not permit a limited partner's contribution to be in the form of services, although that inhibition did not apply to general partners.

Foreign limited partnership: the Act only deals with foreign limited partnerships formed under the laws of another "State" "state" of the United States (see subdivision 12 of Section 101), and any adopting State state that desires to deal by statute with the status of entities formed under the laws of foreign countries must make appropriate changes throughout the Act. The exclusion of such entities from the Act was not intended to suggest that their "limited partners" should not be accorded limited liability by the courts of a State state adopting the Act. That question would be resolved by the choice-of-law rules of the forum State state.

General partner: this definition recognizes the separate functions of the partnership agreement and the certificate of limited partnership. The partnership agreement establishes the basic grant of management power to the persons named as general partners; but because of the passive role played by the limited partners, the separate, formal step of embodying memorializing that grant of power in the certificate of limited partnership has been preserved to emphasize its importance and to provide notice of the identity of the partnership's general partners to persons dealing with the partnership.

Limited partner: as in unlike the case of definition of general partners, this definition provides for admission of limited partners through the partnership agreement and solemnization in the certificate of limited partnership. In addition, the definition makes it clear that being named in the certificate of limited partnership is a prerequisite to limited partner status. Failure to file does not, however, mean that the participant is a general partner or that he has general liability. See Sections 202(e) and 303 alone and does not require identification of any limited partner in the certificate of limited partnership (Section 201). Under the 1916 and the 1976 Acts, being named as a limited partner in the certificate of
limited partnership was a statutory requirement and, in most if not all cases, probably also a prerequisite to limited partner status. By eliminating the requirement that the certificate of limited partnership contain the name, address, and capital contribution of each limited partner, the 1985 Act all but eliminates any risk that a person intended to be a limited partner may be exposed to liability as a general partner as a result of the inadvertent omission of any of that information from the certificate of limited partnership, and also dispenses with the need to amend the certificate of limited partnership upon the admission or withdrawal of, transfer of an interest by, or change in the address or capital contribution of, any limited partner.

Partnership agreement: the prior uniform law 1916 Act did not refer to the partnership agreement, assuming that all important matters affecting limited partners would be set forth in the certificate of limited partnership. Under modern practice, however, it has been common for the partners to enter into a comprehensive partnership agreement, only part of which was required to be included or summarized in the certificate of limited partnership. As reflected in Section 201 of the 1985 Act, the certificate of limited partnership is confined principally to matters respecting the partnership itself and the addition and withdrawal identity of general partners and of capital, and other important issues are left to the partnership agreement. Most of the information formerly provided by, but no longer required to be included in, the certificate of limited partnership is now required to be kept in the partnership records (Section 105).

Partnership interest: this definition first appeared in the 1976 Act and is intended to define what it is that is transferred when a partnership interest is assigned.

SECTION 102. NAME. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain without abbreviation the words "limited partnership";

(2) may not contain the name of a limited partner unless (i) it is also the name of a general partner or the corporate name of a corporate general partner, or (ii) the business of the limited partnership had been carried on under that name
before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership;

(4) (3) may not be the same as, or deceptively similar to, the name of any corporation or limited partnership organized under the laws of this State or licensed or registered as a foreign corporation or limited partnership in this State; and

(5) (4) may not contain the following words [here insert prohibited words].

COMMENT

Subdivision (2) of Section 102 has been carried over from Section 5 of the prior uniform law 1916 Act with certain editorial changes. The remainder of Section 102 is new first appeared in the 1976 Act and primarily reflects the intention to integrate the registration of limited partnership names with that of corporate names. Accordingly, Section 201 provides for central, State-wide state-wide filing of certificates of limited partnership, and subdivisions (3); and (4) and (5) of Section 102 contain standards to be applied by the filing officer in determining whether the certificate should be filed. Subdivision (1) requires that the proper name of a limited partnership contain the words "limited partnership" in full. Subdivision (3) of the 1976 Act has been deleted, to reflect the deletion from Section 201 of any requirement that the certificate of limited partnership describe the partnership's purposes or the character of its business.

SECTION 103. RESERVATION OF NAME.

(a) The exclusive right to the use of a name may be reserved by:

(1) any person intending to organize a limited partnership under this [Act] and to adopt that name;

(2) any domestic limited partnership or any foreign limited partnership
registered in this State which, in either case, intends to adopt that name;

(3) any foreign limited partnership intending to register in this State
and adopt that name; and

(4) any person intending to organize a foreign limited partnership and
intending to have it register in this State and adopt that name.

(b) The reservation shall be made by filing with the Secretary of State an
application, executed by the applicant, to reserve a specified name. If the Secretary
of State finds that the name is available for use by a domestic or foreign limited
partnership, he [or she] shall reserve the name for the exclusive use of the applicant
for a period of 120 days. Once having so reserved a name, the same applicant may
not again reserve the same name until more than 60 days after the expiration of the
last 120-day period for which that applicant reserved that name. The right to the
exclusive use of a reserved name may be transferred to any other person by filing in
the office of the Secretary of State a notice of the transfer, executed by the applicant
for whom the name was reserved and specifying the name and address of the
transferee.

COMMENT

Section 103 is new first appeared in the 1976 Act. The prior uniform law
1916 Act did not provide for registration of names.

SECTION 104. SPECIFIED OFFICE AND AGENT. Each limited
partnership shall continuously maintain in this State:

(1) an office, which may but need not be a place of its business in this State, at which shall be kept the records required by Section 105 to be maintained; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this State, a domestic corporation, or a foreign corporation authorized to do business in this State.

COMMENT

Section 104 is new first appeared in the 1976 Act. It requires that a limited partnership have certain minimum contacts with its State of organization, i.e., an office at which the constitutive documents and basic financial information is kept and an agent for service of process.

SECTION 105. RECORDS TO BE KEPT.

(a) Each limited partnership shall keep at the office referred to in Section 104(1) the following:

(1) a current list of the full name and last known business address of each partner, separately identifying the general partners (in alphabetical order) and the limited partners (in alphabetical order);

(2) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;
(3) copies of the limited partnership's federal, state and local income
tax returns and reports, if any, for the three most recent years; and;

(4) copies of any then effective written partnership agreements and of
any financial statements of the limited partnership for the three most recent years;
and

(5) unless contained in a written partnership agreement, a writing
setting out:

(i) the amount of cash and a description and statement of the
agreed value of the other property or services contributed by each partner and which
each partner has agreed to contribute;

(ii) the times at which or events on the happening of which any
additional contributions agreed to be made by each partner are to be made;

(iii) any right of a partner to receive, or of a general partner to
make, distributions to a partner which include a return of all or any part of the
partner's contribution; and

(iv) any events upon the happening of which the limited
partnership is to be dissolved and its affairs wound up.

(b) Those records Records kept under this section are subject to inspection
and copying at the reasonable request and at the expense of any partner during
ordinary business hours.
COMMENT

Section 105 is new first appeared in the 1976 Act. In view of the passive nature of the limited partner's position, it has been widely felt that limited partners are entitled to access to certain basic documents and information, including the certificate of limited partnership and any partnership agreement, and a writing setting out certain important matters which, under the 1916 and 1976 Acts, were required to be set out in the certificate of limited partnership. In view of the great diversity among limited partnerships, it was thought inappropriate to require a standard form of financial report, and Section 105 does no more than require retention of tax returns and any other financial statements that are prepared. The names and addresses of the general partners are made available to the general public in the certificate of limited partnership.

SECTION 106. NATURE OF BUSINESS. A limited partnership may carry on any business that a partnership without limited partners may carry on except [here designate prohibited activities].

COMMENT

Section 106 is identical to Section 3 of the prior uniform law 1916 Act. Many states require that certain regulated industries, such as banking, may be carried on only by entities organized pursuant to special statutes, and it is contemplated that the prohibited activities would be confined to the matters covered by those statutes.

SECTION 107. BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP. Except as provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable law, has the same rights and obligations with respect thereto as a person who is not a partner.
COMMENT

Section 107 makes a number of important changes in Section 13 of the prior uniform law 1916 Act. Section 13, in effect, created a special fraudulent conveyance provision applicable to the making of secured loans by limited partners and the repayment by limited partnerships of loans from limited partners. Section 107 leaves that question to a State's general fraudulent conveyance statute. In addition, Section 107 eliminates the prohibition in former Section 13 against a general partner's sharing pro rata with general creditors in the case of an unsecured loan. Of course, other doctrines developed under bankruptcy and insolvency laws may require the subordination of loans by partners under appropriate circumstances.

ARTICLE 2

FORMATION: CERTIFICATE OF LIMITED PARTNERSHIP

SECTION 201. CERTIFICATE OF LIMITED PARTNERSHIP.

(a) In order to form a limited partnership, two or more persons must execute a certificate of limited partnership. The certificate shall be executed and filed in the office of the Secretary of State, and The certificate shall set forth:

(1) the name of the limited partnership;

(2) the general character of its business;

(3) the address of the office and the name and address of the agent for service of process required to be maintained by Section 104;

(4) the name and the business address of each general partner
(specifying separately the general partners and limited partners);

(5) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(6) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(7) any power of a limited partner to grant the right to become a limited partner to an assignee of any part of his partnership interest, and the terms and conditions of the power;

(8) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of, or the method of determining, the distribution to which he may be entitled respecting his partnership interest, and the terms and conditions of the termination and distribution;

(9) any right of a partner to receive distributions of property, including cash from the limited partnership;

(10) any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner’s contribution;

(11) any time at which or events upon the happening of which the
limited partnership is to be dissolved and its affairs wound up;

(12) any right of the remaining general partners to continue the
business on the happening of an event of withdrawal of a general partner; and

(4) the latest date upon which the limited partnership is to dissolve;

and

(13) (5) any other matters the general partners determine to include
therein.

(b) A limited partnership is formed at the time of the filing of the
certificate of limited partnership in the office of the Secretary of State or at any later
time specified in the certificate of limited partnership if, in either case, there has
been substantial compliance with the requirements of this section.

COMMENT

The 1985 Act requires far fewer matters required to be set forth in the
certificate of limited partnership are not different in kind from those required by
than did Section 2 of the prior uniform law, although certain additions and deletions
have been made and the description has been revised to conform with the rest of the
Act. In general, the certificate is intended to serve two functions: first, to place
creditors on notice of the 1916 Act and Section 201 of the 1976 Act. This is in
recognition of the fact that the partnership agreement, not the certificate of limited
partnership, has become the authoritative and comprehensive document for most
limited partnerships, and that creditors and potential creditors of the partnership do
and should refer to the partnership agreement and to other information furnished to
them directly by the partnership and by others, not to the certificate of limited
partnership, to obtain facts concerning the capital and finances of the partnership
and the rules regarding additional contributions to and withdrawals from the
partnership; second, to clearly delineate the time at which persons become general
partners and limited partners other matters of concern. Subparagraph (b), which is
based upon the prior uniform law 1916 Act, has been retained to make it clear that
the existence of the limited partnership depends only upon compliance with this section. Its continued existence is not dependent upon compliance with other provisions of this Act.

SECTION 202. AMENDMENT TO CERTIFICATE.

(a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate shall set forth:

(1) the name of the limited partnership;
(2) the date of filing the certificate; and
(3) the amendment to the certificate.

(b) Within 30 days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed:

(1) a change in the amount or character of the contribution of any partner, or in any partner's obligation to make a contribution;
(2) the admission of a new general partner;
(3) the withdrawal of a general partner; or
(4) the continuation of the business under Section 801 after an event of withdrawal of a general partner.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or
other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate; but an amendment to show a change of address of a limited partner need be filed only once every 12 months.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this Section if the amendment is filed within the 30-day period specified in subsection (b).

(f) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

COMMENT

Section 202 makes of the 1976 Act made substantial changes in Section 24 of the prior uniform law 1916 Act. Further changes in this section are made by the 1985 Act. Paragraph (b) lists the basic events--the addition or withdrawal of partners or capital or capital obligations a general partner -- that are so central to the function of the certificate of limited partnership that they require prompt amendment. With the elimination of the requirement that the certificate of limited partnership include the names of all limited partners and the amount and character of all capital contributions, the requirement of the 1916 and 1976 Acts that the certificate be amended upon the admission or withdrawal of limited partners or on any change in the partnership capital must also be eliminated. This change should greatly reduce the frequency and complexity of amendments to the certificate of limited partnership. Paragraph (c) makes it clear, as it was not clear under subdivision (2)(g) of former Section 24 24(2)(g) of the 1916 Act, that the certificate of limited partnership is intended to be an accurate description of the facts to which it relates at all times and does not speak merely as of the date it is executed.
Paragraph (e) provides a "safe harbor" against claims of creditors or others who assert that they have been misled by the failure to amend the certificate of limited partnership to reflect changes in any of the important facts referred to in paragraph (b); if the certificate of limited partnership is amended within 30 days of the occurrence of the event, no creditor or other person can recover for damages sustained during the interim. Additional protection is afforded by the provisions of Section 304. The elimination of the requirement that the certificate of limited partnership identify all limited partners and their respective capital contributions may have rendered paragraph (e) an obsolete and unnecessary vestige. The principal, if not the sole, purpose of paragraph (e) in the 1976 Act was to protect limited partners newly admitted to a partnership from being held liable as general partners when an amendment to the certificate identifying them as limited partners and describing their contributions was not filed contemporaneously with their admission to the partnership. Such liability cannot arise under the 1985 Act because such information is not required to be stated in the certificate. Nevertheless, the 1985 Act retains paragraph (e) because it is protective of partners, shielding them from liability to the extent its provisions apply, and does not create or impose any liability.

Paragraph (f) is added in the 1985 Act to provide explicit statutory recognition of the common practice of restating an amended certificate of limited partnership. While a limited partnership seeking to amend its certificate of limited partnership may do so by recording a restated certificate which incorporates the amendment, that is by no means the only purpose or function of a restated certificate, which may be filed for the sole purpose of restating in a single integrated instrument all the provisions of a limited partnership's certificate of limited partnership which are then in effect.

SECTION 203. CANCELLATION OF CERTIFICATE. A certificate of limited partnership shall be cancelled upon the dissolution and the commencement of winding up of the partnership or at any other time there are no limited partners. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) the name of the limited partnership;
(2) the date of filing of its certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date (which shall be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate determine.

COMMENT

Section 203 changes Section 24 of the prior uniform law 1916 Act by making it clear that the certificate of cancellation should be filed upon the commencement of winding up of the limited partnership. Section 24 provided for cancellation "when the partnership is dissolved."

SECTION 204. EXECUTION OF CERTIFICATES.

(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) an original certificate of limited partnership must be signed by all general partners named therein;

(2) a certificate of amendment must be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner or whose contribution is described as having been increased; and

(3) a certificate of cancellation must be signed by all general partners;

(b) Any person may sign a certificate by an attorney-in-fact, but a power
of attorney to sign a certificate relating to the admission, or increased contribution, of a general partner must specifically describe the admission or increase.

(c) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

COMMENT

Section 204 collects in one place the formal requirements for the execution of certificates which were set forth in Sections 2 and 25 of the prior uniform law 1916 Act. Those sections required that each certificate be signed by all partners, and there developed an unnecessarily cumbersome practice of having each limited partner sign powers of attorney to authorize the general partners to execute certificates of amendment on their behalf. Section 204 insures that each partner must sign a certificate when he becomes a partner or when the certificates reflect any increase in his obligation to make contributions. The 1976 Act, while simplifying the execution requirements, nevertheless required that an original certificate of limited partnership be signed by all partners and a certificate of amendment by all new partners being admitted to the limited partnership. However, the certificate of limited partnership is no longer required to include the name or capital contribution of any limited partner. Therefore, while the 1985 Act still requires all general partners to sign the original certificate of limited partnership, no limited partner is required to sign any certificate. Certificates of amendment are required to be signed by only one general partner and all general partners must sign certificates of cancellation. Section 204 prohibits blanket powers of attorney for the execution of certificates in many cases, since those conditions under which a partner is required to sign have been narrowed to circumstances of special importance to that partner. The former requirement in the 1916 Act that all certificates be sworn has been confined to statements by the general partners, recognizing that the limited partner's role is a limited one was deleted in the 1976 and 1985 Acts as potentially an unfair trap for the unwary (see, e.g., Wisniewski v. Johnson, 223 Va. 141, 286 S.E.2d 223 (1982)); in its place, paragraph (c) now provides, as a matter of law, that the execution of a certificate by a general partner subjects him to the penalties of perjury for inaccuracies in the certificate.

SECTION 205. AMENDMENT OR CANCELLATION EXECUTION BY
JUDICIAL ACT. If a person required by Section 204 to execute a certificate of amendment or cancellation fails or refuses to do so, any other partner, and any assignee of a partnership interest, person who is adversely affected by the failure or refusal; may petition the [designate the appropriate court] to direct the amendment or cancellation execution of the certificate. If the court finds that the amendment or cancellation is proper it is proper for the certificate to be executed and that any person so designated has failed or refused to execute the certificate, it shall order the Secretary of State to record an appropriate certificate of amendment or cancellation.

COMMENT

Section 205 changes of the 1976 Act changed subdivisions (3) and (4) of Section 25 of the prior uniform law 1916 Act by confining the persons who have standing to seek judicial intervention to partners and to those assignees who are adversely affected by the failure or refusal of the appropriate persons to file a certificate of amendment or cancellation. Section 205 of the 1985 Act reverses that restriction, and provides that any person adversely affected by a failure or refusal to file any certificate (not only a certificate of cancellation or amendment) has standing to seek judicial intervention.

SECTION 206. FILING IN OFFICE OF SECRETARY OF STATE.

(a) Two signed copies of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) shall be delivered to the Secretary of State. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his [or her]
authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law he [or she] shall:

(1) endorse on each duplicate original the word "Filed" and the day, month and year of the filing thereof;

(2) file one duplicate original in his [or her] office; and

(3) return the other duplicate original to the person who filed it or his [or her] representative.

(b) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the Secretary of State, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is cancelled.

COMMENT

Section 206 is new first appeared in the 1976 Act. In addition to providing mechanics for the central filing system, the second sentence of this section does away with the requirement, formerly imposed by some local filing officers, that persons who have executed certificates under a power of attorney exhibit executed copies of the power of attorney itself. Paragraph (b) changes subdivision (5) of Section 25 of the prior uniform law 1916 Act by providing that certificates of cancellation are effective upon their effective date under Section 203.

SECTION 207. LIABILITY FOR FALSE STATEMENT IN CERTIFICATE.

If any certificate of limited partnership or certificate of amendment or cancellation
contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person who executes the certificate, or causes another to execute it on his behalf, and knew, and any general partner who knew or should have known, the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knows or should have known that any arrangement or other fact described in the certificate has changed, making the statement inaccurate in any respect within a sufficient time before the statement was relied upon reasonably to have enabled that general partner to cancel or amend the certificate, or to file a petition for its cancellation or amendment under Section 205.

COMMENT

Section 207 changes Section 6 of the prior uniform law 1916 Act by providing explicitly for the liability of persons who sign a certificate as agent under a power of attorney and by confining the obligation to amend a certificate of limited partnership in light of future events to general partners.

SECTION 208. SCOPE OF NOTICE. The fact that a certificate of limited partnership is on file in the office of the Secretary of State is notice that the partnership is a limited partnership and the persons designated therein as limited general partners are limited general partners, but it is not notice of any other fact.

COMMENT
Section 208 is new first appeared in the 1976 Act, and referred to the certificate's providing constructive notice of the status as limited partners of those so identified therein. The 1985 Act's deletion of any requirement that the certificate name limited partners required that Section 208 be modified accordingly.

By stating that the filing of a certificate of limited partnership only results in notice of the limited general liability of the limited general partners, it obviates the concern that third parties may be held to have notice of special provisions set forth in the certificate. While this section is designed to preserve by implication the limited liability of limited partners, the notice implicit protection provided is not intended to change any liability of a limited partner which may be created by his action or inaction under the law of estoppel, agency, fraud, or the like.

SECTION 209. DELIVERY OF CERTIFICATES TO LIMITED PARTNERS. Upon the return by the Secretary of State pursuant to Section 206 of a certificate marked "Filed", the general partners shall promptly deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or cancellation to each limited partner unless the partnership agreement provides otherwise.

COMMENT

This section is new first appeared in the 1976 Act.

ARTICLE 3

LIMITED PARTNERS

SECTION 301. ADMISSION OF ADDITIONAL LIMITED PARTNERS.
(a) A person becomes a limited partner:

(1) at the time the limited partnership is formed; or

(2) at any later time specified in the records of the limited partnership for becoming a limited partner.

(b) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as an additional limited partner:

(1) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(2) in the case of an assignee of a partnership interest of a partner who has the power, as provided in Section 704, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(b) In each case under subsection (a), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

COMMENT

Section 301(a) is new; no counterpart was found in the 1916 or 1976 Acts. This section imposes on the partnership an obligation to maintain in its records the date each limited partner becomes a limited partner. Under the 1976 Act, one could not become a limited partner until an appropriate certificate reflecting his status as
such was filed with the Secretary of State. Because the 1985 Act eliminates the need to name limited partners in the certificate of limited partnership, an alternative mechanism had to be established to evidence the fact and date of a limited partner’s admission. The partnership records required to be maintained under Section 105 now serve that function, subject to the limitation that no person may become a limited partner before the partnership is formed (Section 201(b)).

Subdivision (1) of Section 301(a) adds to Section 8 of the prior uniform law 1916 Act an explicit recognition of the fact that unanimous consent of all partners is required for admission of new limited partners unless the partnership agreement provides otherwise. Subdivision (2) is derived from Section 19 of the prior uniform law 1916 Act but abandons the former terminology of "substituted limited partner."

SECTION 302. VOTING. Subject to Section 303, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or other basis) upon any matter.

COMMENT

Section 302 is new; first appeared in the 1976 Act, and must be read together with subdivision (b)(5) (b)(6) of Section 303. Although the prior uniform law 1916 Act did not speak specifically of the voting powers of limited partners, it is not uncommon for partnership agreements to grant such powers to limited partners. Section 302 is designed only to make it clear that the partnership agreement may grant such power to limited partners. If such powers are granted to limited partners beyond the "safe harbor" of subdivision (6) or (8) of Section 303(b)(5) 303(b), a court may (but of course need not) hold that, under the circumstances, the limited partners have participated in "control of the business" within the meaning of Section 303(a). Section 303(c) simply means makes clear that the exercise of powers beyond the ambit of Section 303(b) is not ipso facto to be taken as taking part in the control of the business.
SECTION 303. LIABILITY TO THIRD PARTIES.

(a) Except as provided in subsection (d), a limited partner is not liable for the obligations of a limited partnership unless he [or she] is also a general partner or, in addition to the exercise of his [or her] rights and powers as a limited partner, he [or she] participates in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he [or she] is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control reasonably believing, based upon the limited partner's conduct, that the limited partner is a general partner.

(b) A limited partner does not participate in the control of the business within the meaning of subsection (a) solely by doing one or more of the following:

(1) being a contractor for or an agent or employee of the limited partnership or of a general partner or being an officer, director, or shareholder of a general partner that is a corporation;

(2) consulting with and advising a general partner with respect to the business of the limited partnership;

(3) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership;

(4) approving or disapproving an amendment to the partnership.
taking any action required or permitted by law to bring or pursue a
derivative action in the right of the limited partnership; or

(5) voting on one or more of the following matters:

(5) requesting or attending a meeting of partners;

(6) proposing, approving, or disapproving, by voting or otherwise, one
or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer
of all or substantially all of the assets of the limited partnership other than in the
ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership
other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the admission or removal of a general partner;

(vi) the admission or removal of a limited partner;

(vii) a transaction involving an actual or potential conflict of
interest between a general partner and the limited partnership or the limited
partners;

(viii) an amendment to the partnership agreement or certificate of
limited partnership; or
(ix) matters related to the business of the limited partnership not otherwise enumerated in this subsection (b), which the partnership agreement states in writing may be subject to the approval or disapproval of limited partners;

(7) winding up the limited partnership pursuant to Section 803; or

(8) exercising any right or power permitted to limited partners under this [Act] and not specifically enumerated in this subsection (b).

(c) The enumeration in subsection (b) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him [or her] in the business of the limited partnership.

(d) A limited partner who knowingly permits his [or her] name to be used in the name of the limited partnership, except under circumstances permitted by Section 102(2), is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

COMMENT

Section 303 makes several important changes in Section 7 of the prior uniform law 1916 Act. The first sentence of Section 303(a) carries over the basic test from former Section 7 - whether the limited partner "takes part in the control of the business" - in order to insure that judicial decisions under the prior uniform law remain applicable to the extent not expressly changed. This differs from the text of Section 7 of the 1916 Act in that it speaks of participating (rather than taking part) in the control of the business; this was done for the sake of consistency with the second sentence of Section 303(a), not to change the meaning of the text. It is intended that judicial decisions interpreting the phrase "takes part in the control of the business" under the prior uniform law will remain applicable to the extent that a different result is not called for by other provisions of Section 303 and other provisions of the Act. The second sentence of Section 303(a) reflects a wholly new
concept. Because in the 1976 Act that has been further modified in the 1985 Act. It was adopted partly because of the difficulty of determining when the "control" line has been overstepped, it was thought it unfair to impose general partner's liability on a limited partner except to the extent that a third party had knowledge of his participation in control of the business. On the other hand, in order to avoid permitting a limited partner to exercise all of the powers of a general partner while avoiding any direct dealings with third parties, the "is not substantially the same as" test was introduced but also (and more importantly) because of a determination that it is not sound public policy to hold a limited partner who is not also a general partner liable for the obligations of the partnership except to persons who have done business with the limited partnership reasonably believing, based on the limited partner's conduct, that he is a general partner. Paragraph (b) is intended to provide a "safe harbor" by enumerating certain activities which a limited partner may carry on for the partnership without being deemed to have taken part in control of the business. This "safe harbor" list has been expanded beyond that set out in the 1976 Act to reflect case law and statutory developments and more clearly to assure that limited partners are not subjected to general liability where such liability is inappropriate. Paragraph (d) is derived from Section 5 of the prior uniform law 1916 Act, but adds as a condition to the limited partner's liability the fact requirement that a limited partner must have knowingly permitted his name to be used in the name of the limited partnership.

SECTION 304. PERSON ERRONEOUSLY BELIEVING HIMSELF [OR HERSELF] LIMITED PARTNER.

(a) Except as provided in subsection (b), a person who makes a contribution to a business enterprise and erroneously but in good faith believes that he [or she] has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner, if, on ascertaining the mistake, he [or she]:

(1) causes an appropriate certificate of limited partnership or a
certificate of amendment to be executed and filed; or

(2) withdraws from future equity participation in the enterprise by executing and filing in the office of the Secretary of State a certificate declaring withdrawal under this section.

(b) A person who makes a contribution of the kind described in subsection (a) is liable as a general partner to any third party who transacts business with the enterprise (i) before the person withdraws and an appropriate certificate is filed to show withdrawal, or (ii) before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under Section 202 that he [or she] is not a general partner, but in either case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

COMMENT

Section 304 is derived from Section 11 of the prior uniform law 1916 Act. The "good faith" requirement has been added in the first sentence of Section 304(a). The provisions of subdivision (2) of Section 304(a) are intended to clarify an ambiguity in the prior law by providing that a person who chooses to withdraw from the enterprise in order to protect himself from liability is not required to renounce any of his then current interest in the enterprise so long as he has no further participation as an equity participant. Paragraph (b) preserves the liability of the equity participant prior to withdrawal (and after the time for appropriate amendment in the case of a limited partnership) by such person from the limited partnership or amendment to the certificate demonstrating that such person is not a general partner to any third party who has transacted business with the person believing in good faith that he was a general partner.
Evidence strongly suggests that Section 11 of the 1916 Act and Section 304 of the 1976 Act were rarely used, and one might expect that Section 304 of the 1985 Act may never have to be used. Section 11 of the 1916 Act and Section 304 of the 1976 Act could have been used by a person who invested in a limited partnership believing he would be a limited partner but who was not identified as a limited partner in the certificate of limited partnership. However, because the 1985 Act does not require limited partners to be named in the certificate, the only situation to which Section 304 would now appear to be applicable is one in which a person intending to be a limited partner was erroneously identified as a general partner in the certificate.

SECTION 305. INFORMATION. Each limited partner has the right to:

(1) inspect and copy any of the partnership records required to be maintained by Section 105; and

(2) obtain from the general partners from time to time upon reasonable demand (i) true and full information regarding the state of the business and financial condition of the limited partnership, (ii) promptly after becoming available, a copy of the limited partnership's federal, state and local income tax returns for each year, and (iii) other information regarding the affairs of the limited partnership as is just and reasonable.

COMMENT

Section 305 changes and restates the rights of limited partners to information about the partnership formerly provided by Section 10 of the prior uniform law 1916 Act. Its importance has increased as a result of the 1985 Act's substituting the records of the partnership for the certificate of limited partnership as the place where certain categories of information are to be kept.

Section 305, which should be read together with Section 105(b), provides a mechanism for limited partners to obtain information about the partnership useful
to them in making decisions concerning the partnership and their investments in it. Its purpose is not to provide a mechanism for competitors of the partnership or others having interests or agendas adverse to the partnership's to subvert the partnership's business. It is assumed that courts will protect limited partnerships from abuses and attempts to misuse Section 305 for improper purposes.

ARTICLE 4

GENERAL PARTNERS

SECTION 401. ADMISSION OF ADDITIONAL GENERAL PARTNERS.

After the filing of a limited partnership's original certificate of limited partnership, additional general partners may be admitted only as provided in writing in the partnership agreement or, if the partnership agreement does not provide in writing for the admission of additional general partners, with the specific written consent of each partner.

COMMENT

Section 401 is derived from, but represents a significant departure from, Section 9(1)(e) of the prior law and carries over the unwaivable requirement that all limited partners must consent. Section 401 of the 1976 Act, which required, as a condition to the admission of an additional general partner, that all limited partners consent and that such consent must specifically identify the general partner involved. Section 401 of the 1985 Act provides that the written partnership agreement determines the procedure for authorizing the admission of additional general partners, and that the written consent of all partners is required only when the partnership agreement fails to address the question.

SECTION 402. EVENTS OF WITHDRAWAL. Except as approved by the
specific written consent of all partners at the time, a person ceases to be a general partner of a limited partnership upon the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in Section 602;

(2) the general partner ceases to be a member of the limited partnership as provided in Section 702;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in writing in the certificate of limited partnership agreement, the general partner: (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) is adjudicated a bankrupt or insolvent; (iv) files a petition or answer seeking for himself [or herself] any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against him [or her] in any proceeding of this nature; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties;

(5) unless otherwise provided in writing in the certificate of limited partnership agreement, [120] days after the commencement of any proceeding
against the general partner seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within [90] days after the appointment without his [or her] consent or acquiescence of a trustee, receiver, or liquidator of the general partner or of all or any substantial part of his [or her] properties, the appointment is not vacated or stayed or within [90] days after the expiration of any such stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person,

(i) his [or her] death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating him [or her] incompetent to manage his [or her] person or his [or her] estate;

(7) in the case of a general partner who is acting as a general partner by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a separate partnership, the dissolution and commencement of winding up of the separate partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; or
(10) in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the partnership.

COMMENT

Section 402 expands considerably the provisions of Section 20 of the prior uniform law 1916 Act which provided for dissolution in the event of the retirement, death or insanity of a general partner. Subdivisions (1), (2) and (3) recognize that the general partner's agency relationship is terminable at will, although it may result in a breach of the partnership agreement giving rise to an action for damages. Subdivisions (4) and (5) reflect a judgment that, unless the limited partners agree otherwise, they ought to have the power to rid themselves of a general partner who is in such dire financial straits that he is the subject of proceedings under the National Bankruptcy Act Code or a similar provision of law. Subdivisions (6) through (10) simply elaborate on the notion of death in the case of a general partner who is not a natural person. Of course, the addition of the words "and in the partnership statement" was not intended to suggest that liabilities to third parties could be affected by provisions in the partnership agreement. Subdivisions (4) and (5) differ from their counterparts in the 1976 Act, reflecting the policy underlying the 1985 revision of Section 201, that the partnership agreement, not the certificate of limited partnership, is the appropriate document for setting out most provisions relating to the respective powers, rights, and obligations of the partners inter se. Although the partnership agreement need not be written, the 1985 Act provides that, to protect the partners from fraud, these and certain other particularly significant provisions must be set out in a written partnership agreement to be effective for the purposes described in the Act.

SECTION 403. GENERAL POWERS AND LIABILITIES.

(a) Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners.

(b) Except as provided in this [Act], a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners
to persons other than the partnership and the other partners. Except as provided in this [Act] or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

COMMENT

Section 403 is derived from Section 9(1) of the prior uniform law 1916 Act.

SECTION 404. CONTRIBUTIONS BY GENERAL PARTNER. A general partner of a limited partnership may make contributions to the partnership and share in the profits and losses of, and in distributions from, the limited partnership as a general partner. A general partner also may make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has the rights and powers, and is subject to the restrictions and liabilities, of a general partner and, except as provided in the partnership agreement, also has the powers, and is subject to the restrictions, of a limited partner to the extent of his [or her] participation in the partnership as a limited partner.

COMMENT

Section 404 is derived from Section 12 of the prior uniform law 1916 Act and makes clear that the partnership agreement may provide that a general partner who is also a limited partner may exercise all of the powers of a limited partner.
SECTION 405. VOTING. The partnership agreement may grant to all or certain identified general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

COMMENT

Section 405 is new first appeared in the 1976 Act and is intended to make it clear that the Act does not require that the limited partners have any right to vote on matters as a separate class.

ARTICLE 5

FINANCE

SECTION 501. FORM OF CONTRIBUTION. The contribution of a partner may be in cash, property, or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

COMMENT

As noted in the comment to Section 101, the explicit permission to make contributions of services expands Section 4 of the prior uniform law 1916 Act.

SECTION 502. LIABILITY FOR CONTRIBUTION.

(a) A promise by a limited partner to contribute to the limited partnership is not enforceable unless set out in a writing signed by the limited partner.

(a) (b) Except as provided in the certificate of limited partnership
agreement, a partner is obligated to the limited partnership to perform any enforceable promise to contribute cash or property or to perform services, even if he [or she] is unable to perform because of death, disability, or any other reason. If a partner does not make the required contribution of property or services, he [or she] is obligated at the option of the limited partnership to contribute cash equal to that portion of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the stated contribution which has not been made.

(b) (c) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this [Act] may be compromised only by consent of all partners. Notwithstanding the compromise, a creditor of a limited partnership who extends credit; or whose claim arises; otherwise acts in reliance on that obligation after the filing of the certificate of limited partnership or an amendment thereto; partner signs a writing which, in either case; reflects the obligation; and before the amendment or cancellation thereof to reflect the compromise; may enforce the original obligation.

COMMENT

Section 502(a) is new; it has no counterpart in the 1916 or 1976 Act. Because, unlike the prior uniform acts, the 1985 Act does not require that promises to contribute cash, property, or services be described in the limited partnership certificate, to protect against fraud it requires instead that such important promises
be in a signed writing.

Although Section 17(1) of the prior uniform law 1916 Act required a partner to fulfill his promise to make contributions, the addition of contributions in the form of a promise to render services means that a partner who is unable to perform those services because of death or disability as well as because of an intentional default is required to pay the cash value of the services unless the certificate of limited partnership partnership agreement provides otherwise.

Subdivision (b) (c) is derived from, but expands upon, Section 17(3) of the prior uniform law 1916 Act.

SECTION 503. SHARING OF PROFITS AND LOSSES. The profits and losses of a limited partnership shall be allocated among the partners, and among classes of partners, in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, profits and losses shall be allocated on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

COMMENT

Section 503 is new first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share profits and losses in the absence of agreement. The 1985 Act differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of profits and losses be in writing, and by its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201.
SECTION 504. SHARING OF DISTRIBUTIONS. Distributions of cash or other assets of a limited partnership shall be allocated among the partners and among classes of partners in the manner provided in writing in the partnership agreement. If the partnership agreement does not so provide in writing, distributions shall be made on the basis of the value, as stated in the certificate of limited partnership records required to be kept pursuant to Section 105, of the contributions made by each partner to the extent they have been received by the partnership and have not been returned.

COMMENT

Section 504 is new first appeared in the 1976 Act. The prior uniform law 1916 Act did not provide for the basis on which partners would share distributions in the absence of agreement. Section 504 also differs from its counterpart in the 1976 Act by requiring that, to be effective, the partnership agreement provisions concerning allocation of distributions be in writing, and in its reference to records required to be kept pursuant to Section 105, the latter reflecting the 1985 changes in Section 201. This section also recognizes that partners may choose to share in distributions on a different basis than different from that on which they share in profits and losses.

ARTICLE 6

DISTRIBUTIONS AND WITHDRAWAL

SECTION 601. INTERIM DISTRIBUTIONS. Except as provided in this Article, a partner is entitled to receive distributions from a limited partnership
before his [or her] withdrawal from the limited partnership and before the
dissolution and winding up thereof:

(1) to the extent and at the times or upon the happening of the events
specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution
under Section 608(c), to the extent and at the times or upon the happening of the
events specified in the certificate of limited partnership.

COMMENT

Section 601 is new first appeared in the 1976 Act. The 1976 Act
provisions have been modified to reflect the 1985 changes made in Section 201.

SECTION 602. WITHDRAWAL OF GENERAL PARTNER. A general
partner may withdraw from a limited partnership at any time by giving written
notice to the other partners, but if the withdrawal violates the partnership
agreement, the limited partnership may recover from the withdrawing general
partner damages for breach of the partnership agreement and offset the damages
against the amount otherwise distributable to him [or her].

COMMENT

Section 602 is new first appeared in the 1976 Act, but is generally derived
from Section 38 of the Uniform Partnership Act.

SECTION 603. WITHDRAWAL OF LIMITED PARTNER. A limited
partner may withdraw from a limited partnership at the time or upon the happening of events specified in the certificate of limited partnership and in accordance with writing in the partnership agreement. If the certificate agreement does not specify in writing the time or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' prior written notice to each general partner at his [or her] address on the books of the limited partnership at its office in this State.

COMMENT

Section 603 is derived from Section 16(c) 16 of the prior uniform law 1916 Act. The 1976 Act provision has been modified to reflect the 1985 changes made in Section 201. This section additionally reflects the policy determination, also embodied in certain other sections of the 1985 Act, that to avoid fraud, agreements concerning certain matters of substantial importance to the partners will be enforceable only if in writing. If the partnership agreement does provide, in writing, whether a limited partner may withdraw and, if he may, when and on what terms and conditions, those provisions will control.

SECTION 604. DISTRIBUTION UPON WITHDRAWAL. Except as provided in this Article, upon withdrawal any withdrawing partner is entitled to receive any distribution to which he [or she] is entitled under the partnership agreement and, if not otherwise provided in the agreement, he [or she] is entitled to receive, within a reasonable time after withdrawal, the fair value of his [or her] interest in the limited partnership as of the date of withdrawal based upon his [or
her] right to share in distributions from the limited partnership.

COMMENT

Section 604 is new first appeared in the 1976 Act. It fixes the distributive share of a withdrawing partner in the absence of an agreement among the partners.

SECTION 605. DISTRIBUTION IN KIND. Except as provided in writing in the certificate of limited partnership agreement, a partner, regardless of the nature of his [or her] contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in writing in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him [or her] exceeds a percentage of that asset which is equal to the percentage in which he [or she] shares in distributions from the limited partnership.

COMMENT

The first sentence of Section 605 is derived from Section 16(3) of the prior uniform law 1916 Act; it also differs from its counterpart in the 1976 Act, reflecting the 1985 changes made in Section 201. The second sentence is new first appeared in the 1976 Act, and is intended to protect a limited partner (and the remaining partners) against a distribution in kind of more than his share of particular assets.

SECTION 606. RIGHT TO DISTRIBUTION. At the time a partner becomes entitled to receive a distribution, he [or she] has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the
distribution.

COMMENT

Section 606 is new. It first appeared in the 1976 Act and is intended to make it clear that the right of a partner to receive a distribution, as between the partners, is not subject to the equity risks of the enterprise. On the other hand, since partners entitled to distributions have creditor status, there did not seem to be a need for the extraordinary remedy of Section 16(4)(a) of the prior uniform law 1916 Act, which granted a limited partner the right to seek dissolution of the partnership if he was unsuccessful in demanding the return of his contribution. It is more appropriate for the partner to simply sue as an ordinary creditor and obtain a judgment.

SECTION 607. LIMITATIONS ON DISTRIBUTION. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership, other than liabilities to partners on account of their partnership interests, exceed the fair value of the partnership assets.

COMMENT

Section 607 is derived from Section 16(1)(a) of the prior uniform law 1916 Act.

SECTION 608. LIABILITY UPON RETURN OF CONTRIBUTION.

(a) If a partner has received the return of any part of his [or her] contribution without violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of one year thereafter for the amount of the returned contribution, but only to the extent necessary to discharge
the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(b) If a partner has received the return of any part of his [or her] contribution in violation of the partnership agreement or this [Act], he [or she] is liable to the limited partnership for a period of six years thereafter for the amount of the contribution wrongfully returned.

(c) A partner receives a return of his [or her] contribution to the extent that a distribution to him [or her] reduces his [or her] share of the fair value of the net assets of the limited partnership below the value, as set forth in the certificate of limited partnership records required to be kept pursuant to Section 105, of his contribution which has not been distributed to him [or her].

COMMENT

Paragraph (a) is derived from Section 17(4) of the prior uniform law 1916 Act, but the one year statute of limitations has been added. Paragraph (b) is derived from Section 17(2)(b) of the prior uniform law 1916 Act but, again, a statute of limitations has been added.

Paragraph (c) is new first appeared in the 1976 Act. The provisions of former Section 17(2) that referred to the partner holding as "trustee" any money or specific property wrongfully returned to him have been eliminated. Paragraph (c) in the 1985 Act also differs from its counterpart in the 1976 Act to reflect the 1985 changes made in Sections 105 and 201.
ARTICLE 7
ASSIGNMENT OF PARTNERSHIP INTERESTS

SECTION 701. NATURE OF PARTNERSHIP INTEREST. A partnership interest is personal property.

COMMENT

This section is derived from Section 18 of the prior uniform law 1916 Act.

SECTION 702. ASSIGNMENT OF PARTNERSHIP INTEREST. Except as provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become or to exercise any rights of a partner. An assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his [or her] partnership interest.

COMMENT

Section 19(1) of the prior uniform law 1916 Act provided simply that "a limited partner's interest is assignable," raising a question whether any limitations on the right of assignment were permitted. While the first sentence of Section 702 recognizes that the power to assign may be restricted in the partnership agreement, there was no intention to affect in any way the usual rules regarding restraints on alienation of personal property. The second and third sentences of Section 702 are
derived from Section 19(3) of the prior uniform law 1916 Act. The last sentence is new first appeared in the 1976 Act.

SECTION 703. RIGHTS OF CREDITOR. On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.

COMMENT

Section 703 is derived from Section 22 of the prior uniform law 1916 Act but has not carried over some provisions that were thought to be superfluous. For example, references in Section 22(1) to specific remedies have been omitted, as has a prohibition in Section 22(2) against discharge of the lien with partnership property. Ordinary rules governing the remedies available to a creditor and the fiduciary obligations of general partners will determine those matters.

SECTION 704. RIGHT OF ASSIGNEE TO BECOME LIMITED PARTNER.

(a) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that (1) (i) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership agreement, or (2) (ii) all other partners consent.

(b) An assignee who has become a limited partner has, to the extent
assigned, the rights and powers, and is subject to the restrictions and liabilities, of a limited partner under the partnership agreement and this Act. An assignee who becomes a limited partner also is liable for the obligations of his [or her] assignor to make and return contributions as provided in Article Articles 5 and 6. However, the assignee is not obligated for liabilities unknown to the assignee at the time he [or she] became a limited partner and which could not be ascertained from the certificate of limited partnership.

(c) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from his [or her] liability to the limited partnership under Sections 207 and 502.

COMMENT

Section 704 is derived from Section 19 of the prior uniform law 1916 Act, but paragraph (b) defines more narrowly than Section 19 the obligations of the assignor that are automatically assumed by the assignee. Section 704 of the 1985 Act also differs from the 1976 Act to reflect the 1985 changes made in Section 201.

SECTION 705. POWER OF ESTATE OF DECEASED OR INCOMPETENT PARTNER. If a partner who is an individual dies or a court of competent jurisdiction adjudges him [or her] to be incompetent to manage his [or her] person or his [or her] property, the partner's executor, administrator, guardian, conservator, or other legal representative may exercise all the partner's rights for the purpose of settling his [or her] estate or administering his [or her] property, including any
power the partner had to give an assignee the right to become a limited partner. If a partner is a corporation, trust, or other entity and is dissolved or terminated, the powers of that partner may be exercised by its legal representative or successor.

COMMENT

Section 705 is derived from Section 21(1) of the prior uniform law 1916 Act. Former Section 21(2), making a deceased limited partner's estate liable for his liabilities as a limited partner was deleted as superfluous, with no intention of changing the liability of the estate.

ARTICLE 8

DISSOLUTION

SECTION 801. NONJUDICIAL DISSOLUTION. A limited partnership is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following:

(1) at the time specified in the certificate of limited partnership;

(2) or upon the happening of events specified in writing in the certificate of limited partnership agreement;

(2) (3) written consent of all partners;

(2) (4) an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited written provisions of the partnership agreement permits the business of the limited partnership
to be carried on by the remaining general partner and that partner does so, but the
limited partnership is not dissolved and is not required to be wound up by reason of
any event of withdrawal; if, within 90 days after the withdrawal, all partners agree
in writing to continue the business of the limited partnership and to the appointment
of one or more additional general partners if necessary or desired; or

(4) (5) entry of a decree of judicial dissolution under Section 802.

COMMENT

Section 801 merely collects in one place all of the events causing
dissolution. Paragraph (3) is derived from Sections 9(1)(g) and 20 of the prior
uniform law 1916 Act, but adds the 90-day grace period. Section 801 also differs
from its counterpart in the 1976 Act to reflect the 1985 changes made in
Section 201.

SECTION 802. JUDICIAL DISSOLUTION. On application by or for a
partner the [designate the appropriate court] court may decree dissolution of a
limited partnership whenever it is not reasonably practicable to carry on the
business in conformity with the partnership agreement.

COMMENT

Section 802 is new first appeared in the 1976 Act.

SECTION 803. WINDING UP. Except as provided in the partnership
agreement, the general partners who have not wrongfully dissolved a limited
partnership or, if none, the limited partners, may wind up the limited partnership's
affairs; but the [designate the appropriate court] court may wind up the limited partnership's affairs upon application of any partner, his [or her] legal representative, or assignee.

COMMENT

Section 803 is new first appeared in the 1976 Act and is derived in part from Section 37 of the Uniform General Partnership Act.

SECTION 804. DISTRIBUTION OF ASSETS. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under Section 601 or 604;

(2) except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under Section 601 or 604; and

(3) except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

COMMENT

Section 804 revises Section 23 of the prior uniform law 1916 Act by providing that (1) to the extent partners are also creditors, other than in respect of their interests in the partnership, they share with other creditors, (2) once the partnership's obligation to make a distribution accrues, it must be paid before any other distributions of an "equity" nature are made, and (3) general and limited
partners rank on the same level except as otherwise provided in the partnership agreement.

ARTICLE 9
FOREIGN LIMITED PARTNERSHIPS

SECTION 901. LAW GOVERNING. Subject to the Constitution of this State, (i) the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and (ii) a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

COMMENT

Section 901 is new first appeared in the 1976 Act.

SECTION 902. REGISTRATION. Before transacting business in this State, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this State;
(2) the state State and date of its formation;

(3) the general character of the business it proposes to transact in this State;

(4) (3) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent must be an individual resident of this state State, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this State;

(5) (4) a statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under paragraph (4) (3) or, if appointed, the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence;

(6) (5) the address of the office required to be maintained in the State of its organization by the laws of that State or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses:

(6) the name and business address of each general partner; and

(7) the address of the office at which is kept a list of the names and
addresses of the limited partners and their capital contributions, together with an
undertaking by the foreign limited partnership to keep those records until the
foreign limited partnership's registration in this State is cancelled or withdrawn.

COMMENT

Section 902 is new first appeared in the 1976 Act. It was thought that
requiring a full copy of the certificate of limited partnership and all amendments
thereto to be filed in each state in which the partnership does business would
impose an unreasonable burden on interstate limited partnerships and that the
information on file was Section 902 required to be filed would be sufficient to tell
interested persons where they could write to obtain copies of those basic
documents. Subdivision (3) of the 1976 Act has been omitted, and subdivisions (6)
and (7) differ from their counterparts in the 1976 Act, to conform these provisions
relating to the registration of foreign limited partnerships to the corresponding
changes made by the Act in the provisions relating to domestic limited partnerships.
The requirement that an application for registration be sworn to by a general partner
is simply intended to produce the same result as is provided for in Section 204(c)
with respect to certificates of domestic limited partnerships; the acceptance and
endorsement by the Secretary of State (or equivalent authority) of an application
which was not sworn by a general partner should be deemed a mere technical and
insubstantial shortcoming, and should not result in the limited partners' being
subjected to general liability for the obligations of the foreign limited partnership
(see Section 907(c)).

SECTION 903. ISSUANCE OF REGISTRATION.

(a) If the Secretary of State finds that an application for registration
conforms to law and all requisite fees have been paid, he [or she] shall:

(1) endorse on the application the word "Filed," and the month, day
and year of the filing thereof;

(2) file in his [or her] office a duplicate original of the application; and
(3) issue a certificate of registration to transact business in this State.

(b) The certificate of registration, together with a duplicate original of the application, shall be returned to the person who filed the application or his [or her] representative.

COMMENT

Section 903 first appeared in the 1976 Act.

SECTION 904. NAME. A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

COMMENT

Section 904 is new first appeared in the 1976 Act.

SECTION 905. CHANGES AND AMENDMENTS. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the Secretary of State a certificate, signed and sworn to by a general partner, correcting such statement.

COMMENT
Section 905 is new first appeared in the 1976 Act. It corresponds to the provisions of Section 202(c) relating to domestic limited partnerships.

SECTION 906. CANCELLATION OF REGISTRATION. A foreign limited partnership may cancel its registration by filing with the Secretary of State a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign limited partnership with respect to [claims for relief] [causes of action] arising out of the transactions of business in this State.

COMMENT

Section 906 is new first appeared in the 1976 Act.

SECTION 907. TRANSACTION OF BUSINESS WITHOUT REGISTRATION.

(a) A foreign limited partnership transacting business in this State may not maintain any action, suit, or proceeding in any court of this State until it has registered in this State.

(b) The failure of a foreign limited partnership to register in this State does not impair the validity of any contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this State.

(c) A limited partner of a foreign limited partnership is not liable as a
general partner of the foreign limited partnership solely by reason of having
transacted business in this State without registration.

(d) A foreign limited partnership, by transacting business in this State
without registration, appoints the Secretary of State as its agent for service of
process with respect to [claims for relief] [causes of action] arising out of the
transaction of business in this State.

COMMENT

Section 907 is new first appeared in the 1976 Act.

SECTION 908. ACTION BY [APPROPRIATE OFFICIAL]. The [designate
the appropriate official] may bring an action to restrain a foreign limited partnership
from transacting business in this State in violation of this Article.

COMMENT

Section 908 is new first appeared in the 1976 Act.

ARTICLE 10

DERIVATIVE ACTIONS

SECTION 1001. RIGHT OF ACTION. A limited partner may bring an action
in the right of a limited partnership to recover a judgment in its favor if general
partners with authority to do so have refused to bring the action or if an effort to
cause those general partners to bring the action is not likely to succeed.

COMMENT

Section 1001 is new first appeared in the 1976 Act.

SECTION 1002. PROPER PLAINTIFF. In a derivative action, the plaintiff must be a partner at the time of bringing the action and (i) must have been a partner at the time of the transaction of which he [or she] complains or (ii) his [or her] status as a partner must have devolved upon him [or her] by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

COMMENT

Section 1002 is new first appeared in the 1976 Act.

SECTION 1003. PLEADING. In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner or the reasons for not making the effort.

COMMENT

Section 1003 is new first appeared in the 1976 Act.

SECTION 1004. EXPENSES. If a derivative action is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff
reasonable expenses, including reasonable attorney's fees, and shall direct him [or her] to remit to the limited partnership the remainder of those proceeds received by him [or her].

COMMENT

Section 1004 is new first appeared in the 1976 Act.

ARTICLE 11
MISCELLANEOUS

SECTION 1101. CONSTRUCTION AND APPLICATION. This [Act] shall be so applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [Act] among states enacting it.

COMMENT

Because the principles set out in Sections 28(1) and 29 of the 1916 Act have become so universally established, it was felt that the 1976 and 1985 Acts need not contain express provisions to the same effect. However, it is intended that the principles enunciated in those provisions of the 1916 Act also apply to this Act.

SECTION 1102. SHORT TITLE. This [Act] may be cited as the Uniform Limited Partnership Act.

SECTION 1103. SEVERABILITY. If any provision of this [Act] or its
application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 1104. EFFECTIVE DATE, EXTENDED EFFECTIVE DATE AND REPEAL. Except as set forth below, the effective date of this [Act] is _________ and the following acts [list prior existing limited partnership acts] are hereby repealed:

(1) The existing provisions for execution and filing of certificates of limited partnerships and amendments thereunder and cancellations thereof continue in effect until [specify time required to create central filing system], the extended effective date, and Sections 102, 103, 104, 105, 201, 202, 203, 204 and 206 are not effective until the extended effective date.

(2) Section 402, specifying the conditions under which a general partner ceases to be a member of a limited partnership, is not effective until the extended effective date, and the applicable provisions of existing law continue to govern until the extended effective date.

(3) Sections 501, 502 and 608 apply only to contributions and distributions made after the effective date of this [Act].
(4) Section 704 applies only to assignments made after the effective date of this [Act].

(5) Article 9, dealing with registration of foreign limited partnerships, is not effective until the extended effective date.

(6) Unless otherwise agreed by the partners, the applicable provisions of existing law governing allocation of profits and losses (rather than the provisions of Section 503), distributions to a withdrawing partner (rather than the provisions of Section 604), and distribution of assets upon the winding up of a limited partnership (rather than the provisions of Section 804) govern limited partnerships formed before the effective date of this [Act].

COMMENT

Subdivisions (6) and (7) did not appear in Section 1104 of the 1976 Act. They are included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.

SECTION 1105. RULES FOR CASES NOT PROVIDED FOR IN THIS [ACT]. In any case not provided for in this [Act] the provisions of the Uniform Partnership Act govern.

COMMENT

The result provided for in Section 1105 would obtain even in its absence in a jurisdiction which had adopted the Uniform Partnership Act, by operation of Section 6 of that act.
SECTION 1106. SAVINGS CLAUSE. The repeal of any statutory provision by this [Act] does not impair, or otherwise affect, the organization or the continued existence of a limited partnership existing at the effective date of this [Act], nor does the repeal of any existing statutory provision by this [Act] impair any contract or affect any right accrued before the effective date of this [Act].

COMMENT

Section 1106 did not appear in the 1976 Act. It was included in the 1985 Act to ensure that the application of the Act to limited partnerships formed and existing before the Act becomes effective would not violate constitutional prohibitions against the impairment of contracts.